

### **REMARKS/ARGUMENTS**

#### ***Claim Rejections – 35 USC § 102***

The Examiner has rejected claims 1 and 25 as being anticipated by Kanada et al. (US 3,640,381) and also Larkin et al. (5,860,743). In response to this objection, the Applicant respectfully submits that even though it is inherent from the wording of claim 1 that the bag of the present invention is made of a single sheet, claim 1 has been amended to specifically state that the bag comprises “a single sheet of flexible, foldable material [...]”. Further, the expression “a sheet of flexible, foldable material” has been moved from the preamble to the body of the claim.

Specifically, the Examiner argues that Kanada et al. teach a bag having a gusseted bottom, the sheet folded at the bottom to provide two opposing walls, and a metal treaded side facing outwardly. In response to this rejection, the Applicant notes that there are in fact several distinguishing features between the packaging bag disclosed by Kanada et al. and the bag of the present invention, and therefore, the bag of the present invention is not anticipated by Kanada et al. for the reasons set forth below.

Firstly, the packaging bag disclosed by Kanada et al. is not made from “a single sheet of flexible, foldable material, wherein the sheet has a metal treated side having a metal coated portion, and an untreated side” as defined in amended claim 1. The packaging bag of Kanada et al. is in fact made from multiple sheets and comprises “an outer covering consisting of two stiff sheets” with ancillary ripping lines, which cover an inner bag [...]” (col. 1, lines 17-19). This is very much different from the construction of the bag having a metal coated portion of the present invention. Kanada et al. specifically state that the outer sheets are “stiff” and therefore implies that they are not intended to be of flexible and foldable material.

Further, the packaging bag disclosed by Kanada et al. does not define a gusset as in the present invention. The inner bag of Kanada et al. does not have a fold line that is "in-folded into the bag, thus defining a gusset centered along the fold line with a least two gusseted bottom edges" as defined in amended claim 1 and illustrated in Figs. 3 and 4. Kanada et al. clearly show in Fig. 12 that the inner bag 92 is formed by folding a thin plastic sheet at 91.

In addition, the packaging bag of Kanada et al. does not have "end portions of the gusseted bottom edges comprising angled edges within the coated portion of the sheet" as defined in amended claim 1.

A detailed reading of claim 1 shows that the bag recited therein has a significantly different construction than the bag disclosed by Kanada et al. The folds and seal lines are in different locations. This is equally applicable to Tsuboi with respect to the construction of the bag.

Accordingly, the Applicant respectfully submits that claims 1 and 25 (by way of dependency) are not anticipated by Kanada et al. and hereby requests reconsideration.

Regarding Larkin et al., the Examiner argues that Larkin et al. teach a bag having an Aluminum sheet cover with a plastic material (col. 6, lines 35-36) and having a gusseted bottom formed by folding the sheet (col. 3, lines 12-24).

Similarly, the pouch disclosed by Larkin et al. is also made from multiple sheets and therefore has a different construction than the bag of the present invention. Larkin et al. teach in col. 2, lines 56-57 that the "flexible pouch is made from a first sheet 12 and a second sheet 14". The pouch further comprises a third sheet used for the bottom 32, clearly shown in Fig. 1. In (col. 3, lines 11-24) Larkin et al. suggest that "a single extruded tube can be used in place of the two sheets 12, 14". Larkin et al. further suggest that as an alternative to using an extruded tube for replacing sheets 12 and 14, "a single sheet can be folded over on itself and can have its free ends bonded together to define a portion of the sealed compartment". Larkin et al. do not suggest that the bottom 32 (third sheet) is also replaced when using a single sheet. Thus, even though sheets

12 and 14 can be replaced by a single sheet, a separate sheet for forming bottom 32 is still needed. Further Larkin et al. do not suggest or imply having a "fold line being in-folded into the bag, thus defining a gusset [...]".

Accordingly, the Applicant respectfully submits that the amended claims 1 and 25 (by way of dependency) clearly distinguish the bag of the present invention from the pouch disclosed by Larkin et al.

***Claim Rejections – 35 USC § 103***

Claims 1-4, 7 and 8 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Osgood (US 5,074,675) in view of Tsuboi (JP 5-178355). Specifically, the Examiner argues that it would be obvious to apply the bottom portion comprising angled edges bonded together of Tsuboi to the metallized bag of Osgood to enable the bag to be used in automatic filling machines.

In response to this rejection, the Applicant submits that the references cited by the Examiner do not render obvious the invention defined in the amended claims as the structure of the bag is not disclosed by any of the references cited and that Osgood explicitly teaches away from producing a fully metallized bag as these would not be suitable for use in today's automated loading machines. Nonetheless, claim 1 has been amended to clearly recite the distinguishing features of the invention. Specifically, claim 1 has been amended to specifically include a metal coated portion on the sheet and that the angled edges are within the coated portion of the sheet. Accordingly, claims 8 and 25 have also been amended to reflect the changes made to claim 1.

With respect, Applicant does not agree that a person skilled in the art applying Tsuboi to Osgood would arrive at the present invention. Firstly, the Examiner is once again reminded that the bag of Tsuboi is made from multiple sheets. Once the sheet of Tsuboi has been folded and gusseted (Figures 1 and 2), the profiles of the top and bottom sheets are cut along the cut lines shown in Figure 3. Cutting the sheet along the cut lines of Figure 3 produces three separate sheets that are shown in Figure 4: two largely rectangular sheets having angled bottom corners and the smaller

sheet which, if unfolded, forms an elongated hexagon shape. The three pieces are then welded together to form the bag shown in Figure 5 wherein the smaller hexagonal sheet forms the bottom of the bag. The welds or seams 2B and 2A where the smaller hexagonal sheet is bonded to the two large rectangular sheets are clearly shown in Figure 5.

Since the bag of Tsuboi is formed from essentially three separate sheets sealed together, this results in a significant structural difference in the bag and therefore additional operations are required to produce the bag. Most notably, since the bottom of the bag is not integral with the front and back of the bag, there are sealed edges at the junctions thereof. As recited in claim 1, the bag of the present invention (since the bottom is integral with the front and back) has only a fold at these edges.

However, the Examiner states that Tsuboi is used only for its teachings of providing the gusseted ends at an angle of 30-60° relative to the gusseted bottom edge. Accordingly, the Examiner is reminded that the teachings of references can be combined only if there is some suggestion or incentive to do so and that rejections born of hindsight are improper.

It is clear that Osgood attempted to produce a suitable bag having the entire outside surface metallized but was unable to do so. Osgood indicates in col. 2, lines 63-66 that "previous attempts at manufacturing bags having both surface aspects metallized failed to yield adequate seal strength in the end gusset for use on automatic loading equipment". In order to address this problem and take advantage of the metallized outer surface, the best compromise that Osgood was able to reach was a bag having surface aspect 36 of the bottom half 30B of end gusset with metallized surface 37 while the outer surface aspect 32 of the top half 30A of end gusset 30 having a non-metallized film surface. Therefore, according to Osgood's teachings, the joined side edges 26A and 26B shown in Fig. 3 simply cannot both be within a metallized area (or coated portion) of the sheet. The same is true for side edges 24A and 24B. As a result, the bag obtained by Osgood has a partially metallized outer surface that is illustrated in Figs. 5 and 7. Osgood in no way suggests or implies that in modifying the design of the bag, one would be able to produce

a bag with an entirely metallized outer surface. Conversely, the Applicant's bag may have an entire gusset area that is metallized and potentially an entire exterior surface that is metallized. This is clearly not possible according to Osgood's teachings. Upon reading this reference, a person of ordinary skill, would be discouraged from trying to produce such a bag and would be led in a direction divergent from the path that was taken by the applicant. Osgood's disclosure in fact teaches away from producing the bag of the present invention.

Advantageously, the bag of the present invention can be metallized over the entire outer surface and thus food products contained within will stay fresh longer as less outside light will be incident thereon. In fact, unexpectedly and completely contrary to Osgood, the present invention in fact relies on a metallized outer surfaces at the angled edges so that only adjacent angled edges with untreated surfaces facing each other are bonded together (see description at para. 36, 39, 44 and 48). It is therefore respectfully submitted that, even if a person of ordinary skill in the relevant art using no inventive skill were to combine the bag design of Tsuboi with the partially metallized bag of Osgood, this person would not arrive at the present invention. At best, the result of the combination would be a bag having a gusseted bottom, made from three separate sheets, that is partially metallized and the end portions of the gusseted bottom edges would definitely not comprise angled edges within the coated portion of the sheet, as defined in amended claim 1.

The Applicant thereby submits that the amendments to claim 1 along with the foregoing arguments address the Examiner's obviousness rejection to claims 1-4, 7 and 8.

The Examiner has also rejected claims 5 and 6 under 35 U.S.C. 103(a) as being unpatentable over Osgood and Tsuboi, further in view of Gruentzel et al. (US 3,485,437). In response to this rejection, the Applicant submits that in view of the amendments and the submissions presented above, amended claim 1 patentably distinguishes the bag of the present invention from the bags of Osgood and Tsuboi either individually or in combination and that by way of dependency, claims 5 and 6 are also patentable.

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Amendment dated August 18, 2006  
Reply to Office Action of April 20, 2006

If there are any fees necessitated by the foregoing communication, please charge such fees to our Deposit Account No. 195113, referencing our File No. 15905-2US.

The Applicant also intends to call the Examiner shortly after submitting this response to discuss the present application.

Date: August 18, 2006

Respectfully submitted,



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